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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 98-205

In the Matter of

1998 Biennial Regulatory Review--
Spectrum Aggregation Limits
for Wireless Telecommunications Carriers

Cellular Telecommunications Industry
Association's Petition for
Forbearance From the 45 MHz
CMRS Spectrum Cap

Amendment of Parts 20 and 24 of the
Commission's Rules-- Broadband PCs
Competitive Bidding and Commercial Mobile
Radio Service Spectrum Cap

Implementation of Sections 3(n) and 322 of the
Communications Act

Regulatory Treatment of Mobile Services

WT Docket No. 96-59

GN Docket No. 93-252

To: The Commission

**JOINT PETITION FOR LIMITED CLARIFICATION OF
WESTERN WIRELESS CORPORATION AND
VOICESTREAM WIRELESS CORPORATION**

Western Wireless Corporation ("Western") and VoiceStream Wireless Corporation ("VoiceStream"), jointly by their attorneys and pursuant to the Commission's Rules, hereby petition the Commission for limited clarification of the Report and Order, FCC 99-244, that was released in this proceeding on September 22, 1999 (hereinafter "R&O").^{1/} As indicated in Appendix A to

^{1/} The R&O was published in the Federal Register on October 7, 1999; accordingly the instant petition is timely filed. See 1998 Biennial Regulatory Review - Spectrum Aggregation

the R&O, Western participated in this proceeding by timely filing comments and reply comments. Additionally, in Supplementary Comments filed April 22, 1999, Western informed the Commission and the other parties that it had recently notified its own shareholders that Western's 80.1 per cent subsidiary, VoiceStream, which provides PCS service in licensed urban service areas in the United States under the VoiceStream® brand name, was being spun off into a separate company that would no longer be owned in any way by Western, and that the spin-off, subject to certain conditions and the right of Western's Board of Directors to cancel, would be completed on May 3, 1999. Accordingly, Western and VoiceStream are parties to this R&O proceeding and have standing to seek limited clarification thereof.

Western and VoiceStream seek clarification regarding implementation of the single revision that the R&O makes to the existing spectrum cap constraint— namely, raising from 45 to 55 MHz the spectrum aggregation limit for CMRS licensees serving rural areas, specifically defined by the R&O as Rural Service Areas ("RSAs").^{2/} As revised by the R&O, Section 20.6(a) of the Commission's Rules, 47 C.F.R. §20.6(a) (1999), states that no license in the broadband PCS, cellular, or SMR services shall have an attributable interest in a total of more than 55 MHz of licensed broadband PCS, cellular and SMR spectrum regulated as CMRS "with significant overlap in any RSA." "Significant overlap" of PCS licensed service area and cellular service area (or "CGSA"), according to Section 20.6(c)(1), "occurs when at least 10 percent of the population of the PCS service area for the counties contained therein is with the CGSA(s)"

Limits for Wireless Telecommunications Carriers, 64 Fed.Reg. 54564 (1999).

^{2/} R&O at 5 (para. 6), at 35 (para. 77), at 38 (para. 84), and at 63 (Appendix B - Section 20.6(a)).

The issue presented by this formulation that requires clarification involves the situation where a single entity has an attributable interest in PCS spectrum totaling 30 MHz, as well as overlapping cellular MSA and RSA spectrum. The percentage or share of the PCS licensed service area's population that is within the cellular MSA's licensed service area (or CGSA) plainly counts toward the 10 percent "significant overlap" threshold established by Section 20.6, because in that overlap area the subject entity has 55 MHz of aggregate attributable spectrum—thereby exceeding the 45 MHz cap that controls in these areas. The ambiguity presented by the R&O is whether the share of the PCS service area's population that is within the cellular *RSA*'s CGSA also counts toward the 10 percent "significant overlap" constraint.

Western and VoiceStream believe that, based on a strict reading of the R&O text, this question may conceivably be answered in the affirmative (although such an interpretation appears inconsistent with the Commission's intent).^{3/} Stated differently, the PCS/RSA population overlap could count toward the 10 percent limit even though that overlap would, in appropriate circumstances, be completely exempt from any remedial action the subject licensee or entity would be compelled to take to comply with the cap. Assuming the "significant overlap" was within the 20 percent limit set forth in Section 20.6(e)(2), the subject entity would need to divest sufficient MSA spectrum to bring the overall cellular/PCS population overlap within the 10 percent bound. At the same time, however, the 55 MHz in the RSA/PCS common area could be retained, by virtue

^{3/} Commission staff have verbally informed counsel for Western and VoiceStream that, as conveyed by the R&O, the Commission unambiguously intended to *exclude* RSA/PCS overlap of 55 MHz from the "significant overlap" calculation required by Section 20.6(c)(1). To avoid lingering uncertainty and out of an abundance of caution, Western and VoiceStream respectfully request that this position be set forth in writing either as a note to the rule or in a Memorandum Opinion and Order on Reconsideration in this proceeding.

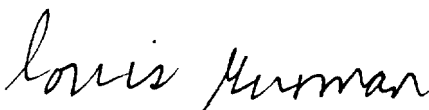
of the relaxation of the spectrum cap codified in the R&O.

Under the alternative interpretation favored by Western, VoiceStream and the Commission staff as well (*see* note 3, *supra*), the PCS population overlapped by the RSA service area would be flatly excluded from the "significant overlap" calculation required by Section 20.6(c)(1). This approach better vindicates the policy reasons the Commission provided in the R&O (at paras. 84-85) for lifting the spectrum cap in RSAs and will provide a moderate measure of relief to CMRS carriers who are encountering increasing difficulty in complying with a regulatory constraint they had hoped the Commission was prepared to either eliminate outright or forbear from enforcing.

WHEREFORE, for the reasons set forth above, Western and VoiceStream respectfully request that the Commission clarify and revise the R&O by stating, in writing, that CMRS licensees and interest holders may exclude from the "significant overlap" calculation required by Section 20.6(c)(1) of the Rules that licensed PCS population overlapped by commonly held cellular RSA service areas.

Respectfully submitted,

WESTERN WIRELESS CORPORATION
VOICESTREAM WIRELESS CORPORATION

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November 8, 1999

Their Attorneys

CERTIFICATE OF SERVICE

I, Robin Johnson, a secretary in the law offices of Gurman, Blask & Freedman, Chartered, do hereby certify that on this 8th day of November, 1999, a copy of the foregoing Joint Petition for Limited Clarification of Western Wireless Corporation and VoiceStream Wireless Corporation has been hand-delivered to the following parties:

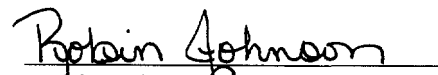
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